

**REMARKS**

The following remarks are in response to the Office Action mailed on June 30, 2005. Prior to entrance of this Amendment, claim 1 was pending in this Application. Upon entrance of this Amendment, claims 1-20 will remain pending in this Application.

In the Office Action, claim 1 was rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,772,610 (hereinafter "McGorry"). In addition, objections to Figs. 1(a), 1(b) and Fig. 2 were made as well as objections to informalities in the specification. Response is hereby made to the rejection and to each of the objections.

Figs. 1(a) and 1(b) and Fig. 2 were objected to because improper shading made several details illustrated in the drawings indecipherable. In response to the drawing objections, Applicant has attached hereto replacement sheets for Figs. 1(a), 1(b) and 2. The improper shading present in the original drawings has been corrected in the attached drawings. Applicant respectfully requests therefore that the objections to the drawings be withdrawn.

The specification was objected to because it contained several minor informalities, each of which were noted in the Office Action. In addition, Applicant also discovered an informality at page 14, line 6 in the form of a minor typographical error. Applicant has herein amended the specification to correct each of these informalities and respectfully requests therefore that the objections to the specification also be withdrawn.

Applicant respectfully submits that no new matter is introduced by the drawing replacement sheets or the amendments to the specification.

Claim 1 was rejected as being anticipated by McGorry. Claim 1 has been amended herein to include an elongated member that is flexible in the midsagittal plane and substantially inflexible in the frontal plane.

McGorry teaches a device that also measures flexion and extension motion in the midsagittal plane and lateral motion in the frontal plane. The McGorry device includes an elongated cylindrical rod 28. The upper end of rod 28 is attached to an upper plate 14. The lower end of rod 28 is constrained by, and slides through an opening in, a lower plate 18. Upper plate 14 and lower plate 18 are tightly attached to the patient's back using straps 20 and 26 respectively.

A sensor 32 is attached to upper plate 14 near the upper end of rod 28 and monitors lateral motion of the patient's spine in the frontal plane. Thus, as the patient moves laterally in the frontal plane, upper plate 14 and sensor 32 also move laterally with the patient to detect the motion. As a result of the upper end of rod 28 being attached to upper plate 14 and the lower end of rod 28 being constrained by lower plate 18, rod 28 flexes or bends in the frontal plane during lateral motion of the patient's spine (see Figs 12 and 14 of McGorry). In fact, use of a rod which is inflexible in the frontal plane will not work in the device of McGorry. This is because such a rod would prevent the patient from having any lateral movement in the frontal plane.

Thus, because the elongated member 28 of McGorry does not flex or bend in the frontal plane, McGorry does not anticipate claim 1 as amended. Furthermore, because McGorry actually teaches away from having an elongated member that is inflexible in the frontal plane (e.g., the McGorry device will not work for its intended purpose if such a member were incorporated into the device), the invention of amended claim 1 is also not obvious in view of McGorry. Applicant respectfully submits therefore that claim 1 as amended is now allowable.

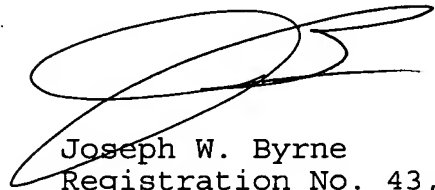
In addition to claim 1, Applicant has herein amended the claims to add new claims 2-20. Dependent claims 2-14 each depend from claim 1 which as amended is now allowable. Dependent claims 2-14, each of which are fully supported by the disclosure in the specification, add a limitation to allowable claim 1. Each of claims 2-14 is therefore narrower in scope than amended claim 1 and therefore should also be allowed. Notwithstanding that each of added dependent claims 2-14 is allowable because each depends from an allowable base claim, each of these claims is also allowable because each of these claims includes one or more additional limitations that patentably distinguishes it from the prior art, including McGorry.

Added claims 15-20, each of which are also fully supported by the disclosure in the specification, each contain one or more limitations that patentably distinguish each claim from the prior art, including McGorry, and therefore each of added claims 16-20 is also allowable.

Accordingly, in view of the above amendments and remarks, Applicant respectfully submits that the application

should be allowed. The Examiner is invited to telephone the undersigned below if it will aid in the prosecution of this application.

Respectfully submitted,



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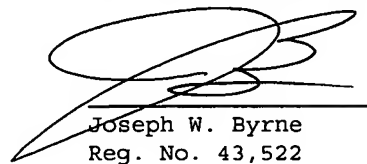
Dated: December 30, 2005

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**(37 C.F.R. §1.8(a))**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 30, 2005.

Date: December 30, 2005



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AMENDMENTS TO THE DRAWINGS

The attached two (2) sheets of drawings are replacement sheets for Fig. 1(a), Fig. 1(b) and Fig. 2. The first sheet, which includes Figs. 1(a) and 1(b), replaces the original sheet including Figs. 1(a) and 1(b). The second sheet, which includes Fig. 2, replaces the original sheet including Fig. 2. The attached replacement sheets are being provided in response to an objection in the Office Action stating that improper shading in Figs. 1(a), 1(b) and 2 made several details illustrated therein indecipherable.

Attachments: Replacement Sheet containing Figs 1(a) and  
1(b)

Replacement sheet containing Fig. 2